**HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE**

**WRIT PETITION No.17689 of 1995**

Between:

G.V. Pratap Reddy …Petitioner.

AND

Government of Andhra Pradesh,
represented by its Principal Secretary,
Irrigation Department (Telugu Ganga Project)
Secretariat, Hyderabad & others. …Respondents.

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**:: O R D E R ::**

Counsel for the Petitioner : Sri Vedula Venkataramana

Counsel for the Respondents : Government Pleader for Irrigation

**10th APRIL 2006**

Whether Executive Engineer, TGP, Division-I, Velugodu, Kurnool District (respondent No.3) could withhold Rs.1,01,10,960/- from the bills payable to the petitioner in relation to the works undertaken in execution of contracts other than the contract of formation of V.B.R. earth dam from KM 3.250 to KM 4.00 from + 254.00 to 268 and from KM 4.00 to KM 4.30 from + 249 to 258.00 on the ground that the petitioner had violated the terms of the latter contract is the question which arises for determination in this petition filed under Article 226 of the Constitution.

The petitioner is a registered special class contractor. In

furtherance of tender notice issued by Superintending Engineer, ID, TGP Circle, Nandyal (respondent No.2), the petitioner submitted tender for execution of work relating to formation of V.B.R. earth dam, as described hereinabove. The tender submitted by the petitioner was accepted by the competent authority and the work was awarded to him. As per the terms of the agreement executed between the parties on 6-5-1991, the soils were to be brought from the specified quarry with the lead of 1 to 3 km. for item No.1 i.e., earth work excavation of impervious soils for forming hearting zone and lead of 5 to 56 km for item No.2 i.e., earth work excavation of semi-pervious and pervious soils for forming casing zone to V.B.R. earth dam. As per the cross section appended to the agreement at note item No.21, the petitioner was prohibited from excavating the soil within 500 meters from the heel of the dam. During the course of inspection on 13-4-1992, respondent No.2 noted that poclains of the petitioner were excavating soil from within 500 meters from the heel of the dam. Immediately thereafter, respondent No.3 vide his letters No.EE/TGP/DB/307M, dated 4-5-1992, EE/TGP/DB/664M, dated 3-9-1992, EE/TGP/DB/D3/F.40/686M, dated 15-9-1992 and letter dated 12-11-1993 pointed out the same to the petitioner and called upon him to backfill the excavated area with soil to its normal level. Respondent No.3 made it clear to the petitioner that if he fails to do so suitable action will be taken by the department and costs recovered from his bills. For the sake of reference, the third letter sent by respondent No.3 is reproduced below:

GOVERNMENT OF ANDHRA PRADESH
IRRIGATION & C.A.D. (P.W.) DEPARTMENT

From:
Sri B.V.Subbaiah, B.E., M.I.E.,
Executive Engineer,

To
Sri G.V.Pratap Reddy,
Special Class Contractor,

T.G.P. Division No.1,
Velgode-518533.
Kurnool District, A.P.

Congress Office Road,
Khammam-507 001.

Letter No,.EE/TGP/DB/D3/F.40/686 M, dated 15-9-1992

Gentlemen,

Sub: Formation of V.B.R. Earth Dam from KM 3.25 to KM 4.00 (+) 254.00 to 268.0 and from KM 4.00 to KM 4.30 from +249 to +269.00 completion of balance works – regarding.

Ref: 1.SE/TGP/NBDL/L.S.Agt.No.4/91-92, dt.6-5-1991.
2.This office Lr.No.EE/TGP/DB/307M, DT.4-5-1992.
3.This Office Lr.No.EE/TGP/DB/F.40/510 M, dt.9-7-1992.

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The above work was entrusted to you in the reference 1st cited. As per agreement conditions the date of concluding of agreement is the date of commencement of works.

In the reference 2nd cited, it was already informed to you that, your poclains were seen excavating soils within 500 meters of upstream of heel of earth dam, and requested to backfill the excavated area with the soils to its normal level duly consolidated. You have not taken any steps to backfill the excavated area so far. If you fail to do so action will be taken by the department to backfill it and the cost will be recovered from your bills. Please note that further payments will not be made unless you backfill the excavated pits to its normal level duly consolidated.

The total value of work done is Rs.305.00 lakhs against 390.46 lakhs i.e., 78% of work is completed.

Further it was already informed to you in this office Lr.No.510M, dt.9-7-1992 to tackle the upstream revetment work in two layers. But the revetment work is not yet taken up by you. Therefore, you are requested to take suitable steps to tackle upstream revetment work to backfill the excavated pits to do so suitable penal action will be taken as per terms and conditions of contract and as per PS to APSS.

The receipt of this notice may please be acknowledged.

Yours faithfully,
Sd/-B.V.Subbaiah 8/9,
Executive Engineer,
T.G.P.Division No.1,Velgode."

In his reply dated 17-11-1993, the petitioner claimed that he was not responsible for the soil excavation within 500 meters of the heel of the dam and someone else may have done this. On receipt of that communication, respondent No.3 vide his letter No.EE/TGP/DD/D3/F.40/ 68M, dated 31-1-1994 informed the petitioner that the contractors who had executed the work earlier did not excavate soils within 500 meters of the earth heel and, as a matter of fact, his poclains were seen excavating soils. After some further correspondence, in which both the parties reiterated their respective stands, respondent No.3 sent communication dated 21-3-1995 to the Branch Manager, Andhra Bank, Lhammad that as per Government instructions, the assets of the contractor be freezed. By another communication dated 4-5-1995, respondent No.3 requested Superintending Engineer, TGP, HLC Circle, Anantapur to withhold an amount of Rs.1,01,10,960/- from the work bills of the petitioner or from any deposits available in his organisation and to remit the same in favour of Assistant Pay & Accounts Officer, T.G.P., Nandyal. Respondent No.3 also sent letter dated 25-7-1995 to the petitioner that his assets have been freezed and that if he does not undertake the task of backfilling, then the amounts will be recovered from the assets available with the department.

On receipt of the aforementioned communication, the petitioner filed this petition for grant of a declaration that unilateral quantification of the amount sought to be recovered from him was illegal, arbitrary and violative of the terms of the articles of agreement. He averred that the action taken by the respondents in general and respondent No.3 in particular to withhold an amount of Rs.1,01,10,960/- was wholly arbitrary and violative of his fundamental right to equality. He further

averred that respondent No.3 did not have jurisdiction to determine the cost likely to be incurred for backfilling the soil by presuming that he had illegally excavated the soil from within 500 meters of the heel of the dam. He pleaded that in terms of clause 3 of the articles of agreement, the dispute can be adjudicated by a civil court and respondent No.3 does not have the power to unilaterally decide the same.

In the counter affidavit dated 18-11-1998 filed by Sri R.Prabhakar Reddy, Superintending Engineer, T.G.P. Circle, Nandyal, it has been further averred that the petitioner illegally excavated soil from the restricted area. It has been further averred that on discovery of the illegal excavation of soil by the petitioner, the competent authority issued notices to him to backfill the excavated area to its normal level. However, he did not take any steps in this regard and, therefore, it became necessary to withhold the amounts payable to him. Paragraphs 3 and 4 of the affidavit of Sri Prabhakar Reddy read as under:

> "3. It is respectfully submitted that the work of formation of V.B.R. Earth dam from KM 3.250 to 4.000 KM from +254.00 to(+) 268.00 and from KM 4.000 to 4.3000 KM from (+) 249.00 to (+) 268.00 was concluded with the petitioner by the 2nd respondent under Superintending Engineer's letter L.S. Agreement No.4/91-92/SE/TGP/NDL, dt.6-5-1991. As per agreement conditions, the soils are to be brought from the specified quarry with a lead of 1 to 3 KM for the item No.1 i.e., Earth work excavation of semipervious and pervious soils for forming casing zone to V.B.R. earth dam of Schedule-A of agreement. Further as per cross section appended to agreement at note item 21, the contractor should not excavate the soils within 500 mts from the heel of the dam. But the contractor has excavated the soils within 500 mts to a tune of quantity 3,07,000 Cum instead of obtaining them as per agreement lead. This

illegal excavation was pointed out by the then Superintending Engineer, T.G.P. Circle, Nandyal during inspection of works on 13-4-1992. The petitioner was addressed vide Executive Engineer, T.G.P. Division No.I, Velugodu Lr.No.307M, dt.4-5-1992 (2) Lr. No.664M, dt.3-9-1992 (3) Lr.No.686M, dt.15-9-1992 and (4) Lr.No.68 M, dt.31-1-1994 stating that the illegal excavation was done within 500 mts and informed to backfill the excavated area to its normal level duly consolidated. It was also informed to the petitioner that if he fails to do so, suitable action will be taken by the department to recover the cost of refilling from the petitioner. Hence it is absolutely false to state that the petitioner was not informed. Accordingly the approximate cost of refilling the excavated area within 500 mts with S.S.R. 1994-95 works out to Rs.224.62 lakhs and the difference in lead charges works out to Rs.11,45,532/- for the above quantity of 3,07,000 Cum. After deducting the amounts (B.G. for Rs.8,50,000/- + withheld amount Rs.6,21,388/- + amount recovered towards difference in lead Rs.2,27,854/- + work done but not paid Rs.17,18,515/- to a tune of Rs.34,17,757/- available with the department the balance amount to be recovered works out to Rs.2,01,89,775/- (Rs.2,24,62,000/- + Rs.11,45,532/-) – (Rs.34,17,757/-) from the petitioner bills or assets available with the various unit offices.

4. It is respectfully submitted that the contractor had committed the breach of contract and violated the terms and conditions of the contract by excavating the soils within 500 mts from the heel of the dam which endangers the safety of the reservoir. For taking up the remedial measures refilling costs is proposed to be recovered from the petitioner. The action taken for effecting the recovery from the other works of the petitioner is as per the rules and to safeguard the interest of the Government. As aforesaid, the work of formation of V.B.R. from KM 3.250 to 4.000 from (+) 254.00 to (+) 268.00 and from KM 4.000 to KM 4.300 (+) 249.00 to (+) 268.00 was entrusted to the petitioner under L.S. Agreement No.4/91-92/SE/TGP/NDL, dt.6-5-1991. The contention of the petitioner is not correct stating that he was

entrusted the balance work left over by the other agency. The work of formation of V.B.R. Earth dam up to + 249.00 from KM 4.000 to 5.300 was entrusted to Sri Dega Narasimha Rao, Contractor under L.S. Agreement No.21/87-88/SE/TGP/ NDL, dt.5-12-1987 under 1st phase of work. By the time of commencing the work by the petitioner the formation of earth bund upto (+) 249.00 was completed by other agency. The date of commencement for the petitioner work operates from the date of signing of agreement i.e., 6-5-1991. The petitioner has completed the formation of earth bund by 5/92. There was no hindrance or obstructions made to him by the department during execution of work. As the contractor excavated the soils within 500 mts from the heel of the dam during execution of work, the contractor was informed, to backfill the excavated area by the 3rd respondent in Lr.No.(1) 307 M, dt.4-5-1992 (2) 664 M, dt.3-9-1992 (3) 686 M, dt.15-9-1992 and (4) 68 M, dt.31-1-1994. But the contractor failed to do so payment was to the contractor in L.S. X & XI part bills duly recovering the difference of cost in lead charges for the approximate quantity excavated. It was proposed to recover the cost of refilling after finalising the exact quantity amount. This was not finalised during the execution of work. The statement made by the petitioner that he is executing the work sincerely, according to terms and conditions is totally false as he has committed breach of contract by violating the agreement conditions and specifications by excavating the soils within 500 mts from the heel of the dam as against the specified lead in the agreement, causing danger to the safety of the dam. The actual amounts withheld are furnished in para 2 above."

In the additional affidavit dated 28-12-2005 filed by Sri G. Gopal Reddy, Superintending Engineer, FAC, TGP Circle, Nandyal, reference has been made to notices dated 5-5-1995 and 25-7-1995 issued to the petitioner to backfill the excavated area and it has been averred that the cost of backfilling the excavated area was worked out

in accordance with the Government Memo No.15053/TGP/I/94-14, dated 24-12-2001. Sri Gopal Reddy has further averred that vide letter dated 26-1-2003, Chief Engineer, TGP informed the Government that five contractors including the petitioner have illegally excavated soil within 500 meters and the total cost of backfilling is Rs.4,41,00,000/- and recovery towards lead difference charges is to the tune of Rs.13,73,613/-. Out of this, the petitioner's liability is Rs.1,14,33,710/- towards backfilling cost and Rs.4,01,556/- towards lead difference charges(totalling Rs.1,18,35,266/-). According to Sri Gopal Reddy, a sum of Rs.34,17,757/- is available in the account of the petitioner and, therefore, an additional amount of Rs.84,17,509/- has to be recovered from him. Along with his affidavit, Sri Gopal Reddy has filed copies of letters dated 4-5-1992, 3-9-1992, 15-9-1992, 31-1-194, 5-5-1995, 25-7-1995, 18-4-1995, 24-12-2001, 31-7-1995, 26-1-2003, 6-3-2002, 22-12-2003, 4-5-1995 and 6-5-1991.

Sri Vedula Venkataramana, learned counsel for the petitioner argued that the self serving exercise undertaken by respondent No.3 to determine the cost of filling the excavated area is plainly illegal and the same could not be made basis for a withholding the payment of bills raised by the petitioner in lieu of execution of other works. He submitted that the so-called dispute regarding the alleged illegal excavation from within 500 meters of the heel of the dam can be adjudicated by the civil court in terms of clause 3 of the articles of agreement and, therefore, the determination made by respondent No.3 is liable to be treated as nullity. Sri Venkataramana relied on the judgment of the Supreme Court in **State of Karnataka v. Rameshwara Rice Mills, Thirthahalli**[1] and argued that the so-called breach of the terms of the agreement does not entitle the respondents to adjudicate upon the dispute and, in any case, the respondents

cannot withhold the payment of bills raised in respect of other contracts.

Learned Government Pleader for Irrigation relied on the contents of articles of agreement dated 6-5-1991 entered into between the parties to show that the petitioner had agreed to abide by the Andhra Pradesh Standard Specifications. He than referred to Clauses 66 and 71 of the Andhra Pradesh Standard Specifications and argued that the Government is entitled to retain or deduct the amount from any money that may be due or may become due to the contractor under articles of agreement dated 6-5-1991 and/or under any contract or contracts or any other account. He argued that the respondents did not commit any illegality by withholding the amount payable in relation to the bills submitted in lieu of execution of other works. Learned Government Pleader also emphasised that the remedy available to the petitioner in terms of clause 3 of the articles of agreement is to file civil suit and argued that the High Court should not entertain his grievance under Article 226 of the Constitution more so because highly contentious facts are required to be decided for the purpose of determining his entitlement to receive the amount of Rs.1,01,10,960/-.

I have given serious thought to the entire matter. The petitioner has not controverted the assertion contained in the counter affidavit filed on behalf of the respondents that he had signed the Andhra Pradesh Standard Specifications and Addenda Form maintained in the Circle Office and agreed to be bound by the conditions of the Andhra Pradesh Standard Specifications for items of works described in Schedule A. He has also not controverted that in terms of Clause 66 of the Andhra Pradesh Standard Specifications, the contractor can be held liable for fraud or willful neglect or default in the execution of the contract or any willful or unauthorised deviations from the drawings,

specifications, instructions and directions and that in terms of Clause 71, the Government can retain or deduct the amount from any money that may be due or become due from the contractor under the same agreement or any other contract or contracts or any other account. Therefore, the decision of the Government to withhold the amount representing the cost of backfilling of the area lying within 500 meters of the heel of the dam from the bills of other contracts cannot be termed as arbitrary or illegal per se.

The petitioner has not placed any material on the record of the writ petition to show that the facts found by respondent No.2 at the time of inspection carried out on 13-4-1992 namely, that his poclains were seen excavating soils within 500 meters of upstream of the heel of the dam are incorrect. He has also not denied that respondent No.3 had repeatedly asked him to backfill the excavated area with the soil to its normal level. It is also not his case that on receipt of communications dated 4-5-1992, 3-9-1992, 15-9-1992, 12-11-1993, 30-1-1994, 5-5-1995 and 25-7-1995, he had taken steps to refill the excavated area. Therefore, the exercise undertaken by respondent No.3 for deducting the amount (cost of backfilling the excavated area) cannot be declared as without jurisdiction or vitiated due to violation of principles of natural justice. If the petitioner has any grievance against withholding of the amount representing the cost of re-filling the excavated area, the remedy available to him is to file a civil suit. Clause 3(1)(ii) of the articles of agreement clearly provides that all claims above Rs.50,000/- in value shall be decided by way of civil court of competent jurisdiction by regular suit and not by arbitration. Clause 3(2) provides that a reference for adjudication can be made by either party within six months from the preparation of the bill. Since this remedy was available to the petitioner in accordance with the terms of the

agreement, the same will have to be treated as an effective alternative remedy and there is no justification for exercise of power by this Court under Article 226 of the Constitution of India ignoring the rule of alternative remedy. Even otherwise, in exercise of its jurisdiction under Article 226 of the Constitution of India, the High Court cannot decide the contentious issues relating to alleged illegal excavation of soil by the petitioner from within 500 meters of the hill of the dam and his liability to backfill the excavated area.

In this connection, I may usefully refer to some Judgments of the Supreme Court. In **State of U.P. v. Bridge & Roof Co.(India) Ltd.**[2], the Supreme Court was called upon to consider whether the rates quoted by the contractor were inclusive of the sales tax, if any, on the constructional plants, materials and supplies required for the purpose of execution of the contract. The respondent, who was awarded contract for rehabilitation and improvement of certain stretch of road in Uttar Pradesh applied to the Commissioner of Sales Tax, Uttar Pradesh for composition of tax liability. The Deputy Commissioner, Sales Tax, in exercise of the power delegated to him by the Commissioner, passed order dated 27-5-1992 that sales tax should be deducted at the rate of 1% at the time of payment of balance amount. After three years, the respondent filed writ petition in Allahabad High Court questioning the deduction of sales tax. The High Court did not go into the issue of maintainability of the writ petition, but disposed of the same by observing that the Government shall deduct only 1% of the bill in question up to 31-3-1995. While setting aside the High Court's order on merits, the Supreme Court held:

> "15. In our opinion, the very remedy adopted by the respondent is misconceived. It is not entitled to any relief in these proceedings, i.e., in the writ petition filed by it. The High Court appears to be right in not pronouncing upon any

of the several contentions raised in the writ petition by both the parties and in merely reiterating the effect of the order of the Deputy Commissioner made under the proviso to Section 8-D(1).

16. Firstly, the contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is governed by the provisions of the Contract Act or, may be, also by certain provisions of the Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for the civil court, as the case may be. Whether any amount is due to the respondent from the appellant-Government under the contract and, if so, how much and the further question whether retention or refusal to pay any amount by the Government is justified, or not, are all matters which cannot be agitated in or adjudicated upon in a writ petition. The prayer in the writ petition, viz., to restrain the Government from deducting a particular amount from the writ petitioner's bill(s) was not a prayer which could be granted by the High Court under Article 226. Indeed, the High Court has not granted the said prayer.

17. Secondly, whether there has been a reduction in the statutory liability on account of a change in law within the meaning of sub-clause (4) of clause 70 of the contract is again not a matter to be agitated in the writ petition. That is again a matter relating to interpretation of a term of the contract and should be agitated before the arbitrator or the civil court, as the case may be. If any amount is wrongly withheld by the Government, the remedy of the respondent is to raise a dispute as provided by the contract or to approach the civil court, as the case may be, according to law. Similarly if the Government says that any overpayment has been made to the respondent, its remedy also is the same.

18. Accordingly, it must be held that the writ petition filed by

the respondent for the issuance of a writ of mandamus restraining the Government from deducting or withholding a particular sum, which according to the respondent is payable to it under the contract, was wholly misconceived and was not maintainable in law. (See the decision of this Court in **Asstt. Excise Commr. v. Issac Peter**[3] where the law on the subject has been discussed fully.) The writ petition ought to have been dismissed on this ground alone.

21. There is yet another substantial reason for not entertaining the writ petition. The contract in question contains a clause providing inter alia for settlement of disputes by reference to arbitration (clause 67 of the contract). The arbitrators can decide both questions of fact as well as questions of law. When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties should not follow and adopt that remedy and invoke the extraordinary jurisdiction of the High Court under Article 226. The existence of an effective alternative remedy — in this case, provided in the contract itself — is a good ground for the court to decline to exercise its extraordinary jurisdiction under Article 226. The said article was not meant to supplant the existing remedies at law but only to supplement them in certain well-recognised situations. As pointed out above, the prayer for issuance of a writ of mandamus was wholly misconceived in this case since the respondent was not seeking to enforce any statutory right of theirs nor was it seeking to enforce any statutory obligation cast upon the appellants. Indeed, the very resort to Article 226 — whether for issuance of mandamus or any other writ, order or direction — was misconceived for the reasons mentioned supra."

In **Kerala State Electricity Board v. Kurien E.Kalathil**[4], the Supreme Court considered the issue relating to maintainability of the writ petition in a contractual matter. The facts of that case were that the

appellant, State Electricity Board executed an agreement dated 16-9-1981 with the respondent contractor for construction of a dam. After the commencement of the work, the State Government revised, by notification dated 30-3-1983, the minimum wages payable to employees employed in the works mentioned in the notification, w.e.f 1-4-1983. The respondent contractor claimed that he began making the revised payments to his workers as required for the period 1-4-1983. Till December 1984, the Board reimbursed the respondent contractor. However, from January 1985 the Board stopped making the payments for labour escalation, contending that construction of a dam was not covered by the notification dated 30-3-1983. This disagreement was settled when the Industrial Tribunal made an award o n 14-10-1993, holding that the notification was applicable to dam construction (in case of workers employed for construction or maintenance of roads, or building operations and for stone-breaking or stone-crushing). The award became final. On 23-12-1994 the Board wrote the respondent demanding recovery with interest of Rs.3.65 crores, which had been paid in the form of advances for various heads of work. The respondent filed a writ petition seeking to have the letter of demand quashed and also praying for payment of the amounts paid in revised wages. While the petition was pending, the Board, by an order dated 26-2-1997 terminated the contract, which the contractor challenged by filing another petition. The High Court disposed of both petitions holding that the termination of the contract was arbitrary, unjust and not in public interest and directed the Board to pay the amounts claimed by the respondent along with interest at 18%. The Supreme Court partly allowed the appeal of the Board and held:

> "The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a

question of construction of contract. If a term of a contract is violated, ordinarily the remedy is not a writ petition under Article 226. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. ……..A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies."

In **State of Jammu & Kashmir v. Ghulam Mohd. Dar**[5], the Supreme Court reiterated the settled rule that a writ of mandamus should not ordinarily be issued for enforcing the terms and conditions of a contract.

Recently a Division Bench of this Court considered similar issue in Writ Petition No.3520 of 2006, **M/s.MRKR-MBGEC v. Chief**

**Administrative Officer, Construction, South Central Railway, Secunderabad and others** decided on 22-3-2006 and held that where an effective alternative remedy of civil suit is available to the aggrieved person, the High Court will not entertain petition under Article 226 of the Constitution.

Before concluding, I deem it proper to refer to the judgment of the Supreme Court in **State of Karnataka v. Rameshwara Rice Mill** (supra). In that case, the Supreme Court was called upon to consider whether the State Government was competent to adjudicate upon the question relating to breach of contract committed by a private party and answered the same in negative. The facts of that case show that respondent No.3 entered into an agreement with the State of Mysore to purchase paddy on its behalf under the Paddy Procurement Scheme, 1959 and to hull the paddy and supply rice. Clause 12 of the agreement related to breach of conditions of the agreement and the consequences of such breach. The State Government alleged that the respondent had committed breach of the contract by making short delivery of rice and demanded damages of Rs.7,344.16p. However, the respondent did not pay the damages. Therefore, the State Government initiated proceedings under the Revenue Recovery Act as if the amount demanded from the respondent was in the nature of arrears of land revenue. The respondent challenged the recovery proceedings by filing civil suit. The trial Court dismissed the suit, but the appellate Court decreed the same. The second appeal preferred by the State Government was referred to a Full Bench because there were two conflicting decisions of the Division Benches of the High Court. The Full Bench held that the State Government is not competent to adjudicate upon the question relating to liability of the contracting party. The Supreme Court partly confirmed the judgment of

the Full Bench and observed:

> "…….On a plain reading of the words it is clear that the right of the second party to assess damages would arise only if the breach of conditions is admitted or if no issue is made of it. If is was the intention of the parties that the officer acting on behalf of the State was also entitled to adjudicate upon a dispute regarding the breach of conditions the wording of clause 12 would have been entirely different. It cannot also be argued that a right to adjudicate upon an issue relating to a breach of conditions of the contract would flow from or is inhered in the right conferred to assess the damages arising from a breach of conditions. The power to assess damages, as pointed out by the Full Bench, is a subsidiary and consequential power and not the primary power. Even assuming for argument's sake that the terms of clause 12 afford scope for being construed as empowering the officer of the State to decide upon the question of breach as well as assess the quantum of damages, we do not think that adjudication by the officer regarding the breach of the contract can be sustained under law because a party to the agreement cannot be an arbiter in his own cause. Interests of justice and equity require that where a party to a contract disputes the committing of any breach of conditions the adjudication should be by an independent person or body and not by the officer party to the contract. The position will, however, be different where there is no dispute or there is consensus between the contracting parties regarding the breach of conditions. In such a case the officer of the State, even though a party to the contract will be well within his rights in assessing the damages occasioned by the breach in view of the specific terms of clause 12."

In my opinion, the ratio of that decision is of no help to the petitioner because in the present case the respondents have not adjudicated on any dispute between the parties. What respondent

No.3 did was to repeatedly remind the petitioner of the fact that he had excavated the soil from the prohibited area and, therefore, he was liable to backfill the excavated area. The amount payable to the petitioner in respect of other works was withheld because he failed to refill the excavated area. This cannot be equated with adjudication of a dispute. That apart, as mentioned above, in terms of Clause 3 of the articles of agreement, an effective alternative remedy is available to the petitioner by way of civil suit. In the decision referred to above, the Supreme Court did not deal with the issue of alternative remedy. Therefore, I do not find any valid ground to make a departure from the settled law that High Court will not entertain writ petition under Article 226 of the Constitution, if an effective alternative remedy is available to the petitioner.

In the result, the writ petition is dismissed leaving the petitioner freegt to avail appropriate alternative remedy. The parties are left to bear their own costs.

**G.S.SINGHVI, C.J.**

10th April, 2006.

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[1] **AIR 1987 SC 1359**
[2] (1996) 6 SCC 22
[3] (1994) 4 SCC 104
[4] (2000) 6 SCC 293
[5] (2004) 12 SCC 327